

***United States Court of Appeals
for the Second Circuit***



ADDENDUM

74-1279

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Pages

United States Court of Appeals

FOR THE SECOND CIRCUIT

No. 74-1279

JORDAN BROWN and all others similarly situated,
Plaintiff-Appellee,

—against—

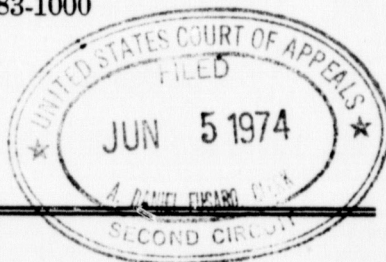
FIRST NATIONAL CITY BANK,
Defendant-Appellant.

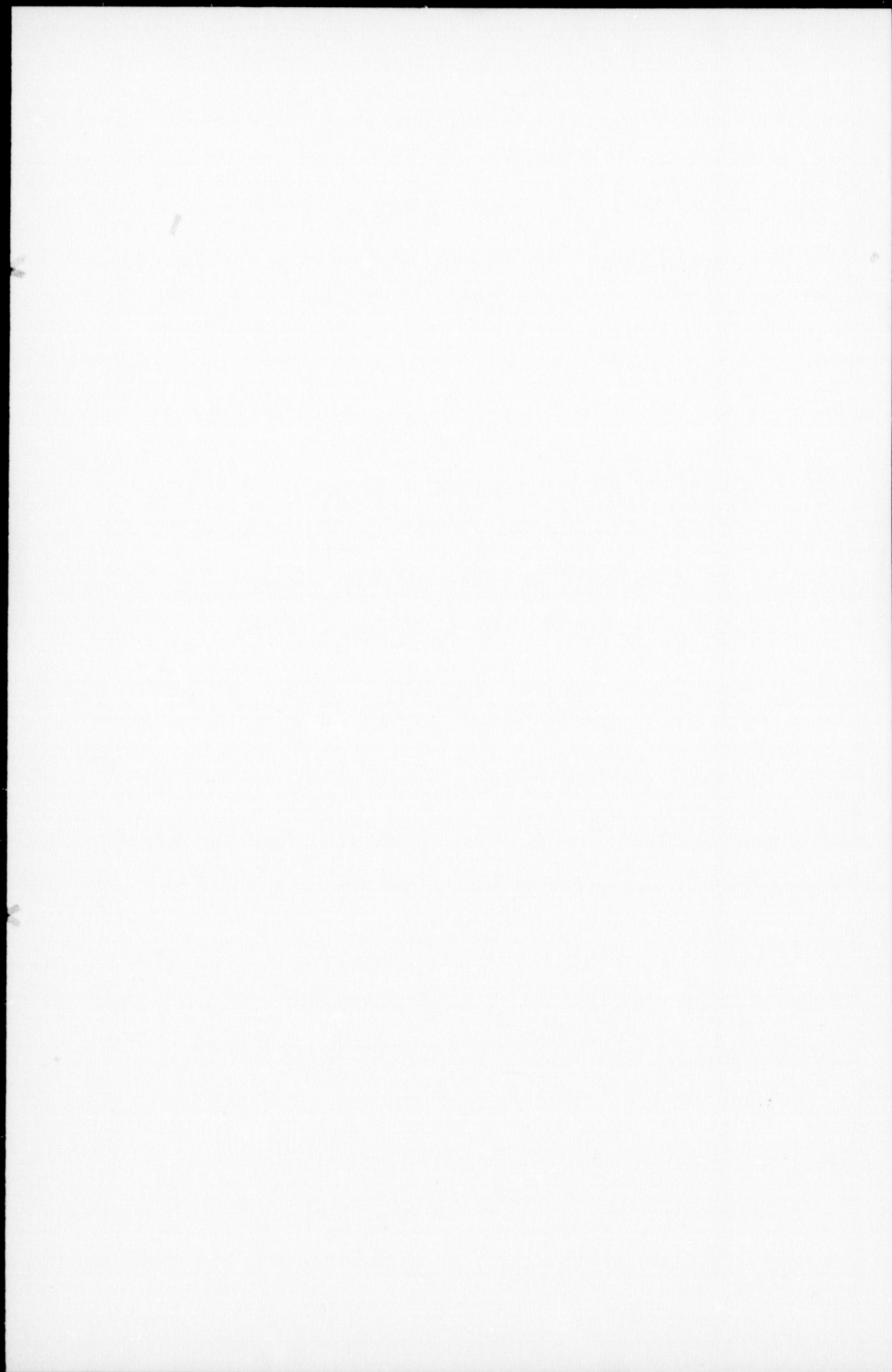
ON APPEAL from the UNITED STATES DISTRICT COURT
for the SOUTHERN DISTRICT of NEW YORK

ADDENDUM TO THE REPLY BRIEF FOR DEFENDANT-APPELLANT

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Of Counsel





ADDENDUM

Introduction

This addendum contains a letter from the New York State Banking Department dated May 28, 1974, forwarding an opinion given by the Banking Department on July 22, 1971 which contains an express interpretation of § 108(5) of the New York Banking Law as it applies to the two issues presented to this Court on appeal. This correspondence was not received by defendant-appellant Citibank until May 29, 1974, and, therefore, was not available for inclusion in the addendum to the Brief for Defendant-Appellant, filed April 9, 1974, or as an addendum to the Reply Brief for Defendant-Appellant, filed May 23, 1974.

New York State Banking Department Letter of May 28, 1974

STATE OF NEW YORK
BANKING DEPARTMENT
TWO WORLD TRADE CENTER
NEW YORK, N. Y. 10047

[SEAL]

HARRY W. ALBRIGHT, JR.
SUPERINTENDENT OF BANKS

May 28, 1974

John Leferovich, Jr., Esq.
New York State Bankers Association
485 Lexington Avenue
New York, New York 10017

Dear Mr. Leferovich:

We are in receipt of your letter asking whether this Department has ever issued an opinion as to whether Section 108(5) of the Banking Law permits a bank subject to the jurisdiction of the Department to enter into a loan agreement with a customer pursuant to which the bank,

at the option of and pursuant to a written request by the customer, will either:

- a) automatically loan the customer funds by crediting the customer's demand deposit account (i.e., checking account) in an agreed sum, e.g., an appropriate multiple of \$100 any time the amount of checks drawn against, or other charges to, the said checking account exceed the credit balance thereof; *or*,
- b) pursuant to a check or other acceptable written authorization from a customer, loan the customer's demand deposit account (i.e., checking account) in the amount specifically authorized.

This is to inform you that on July 22, 1971, a staff attorney wrote the enclosed letter to a bank depositor who had inquired as to the propriety under the Banking Law of a banking institution's, pursuant to a contractually established procedure respecting overdrafts, charging a depositor's demand account with an appropriate multiple of \$100 and computing interest thereon. (The name of the addressee has been blanked out in the enclosure forwarded hereby.) A search of the Department's legal files did not reveal any other correspondence on the question raised.

Since I am aware that the question you raised is in litigation at the moment, in the interests of fairness to all parties, I am taking the liberty of forwarding a copy of this letter and its enclosure to counsel for the other parties involved in the subject litigation.

Very truly yours,

CAMERON F. MACRAE, III
Deputy Superintendent and Counsel

Enclosure

New York State Banking Department Letter of July 22, 1971*OPINION FILE — § 108(5)(f) B.L.*

July 22, 1971

Your letter of March 5, 1971, addressed to Deputy Superintendent and Counsel Serchuk, has been referred to me for attention and reply.

In your letter you ask for comments on the following three practices of the trust company, concerning your Credit Account which you maintain with it. Each practice will be separately stated and commented upon.

1. Instead of merely charging your account with the exact amount of the check drawn against it, the trust company increases the charge to the next higher multiple of \$100, and then computes the interest upon such higher figure.

This practice is in accordance with your contract with the trust company which provides that the excess over the amount of the check be credited to your regular checking account (Par. 1 of the Agreement). Section 108(5)(f) of the Banking Law expressly permits such an agreement to be made.

Incidentally, the lawful interest which may be charged is only 1% per month, and not 1.5% per month.

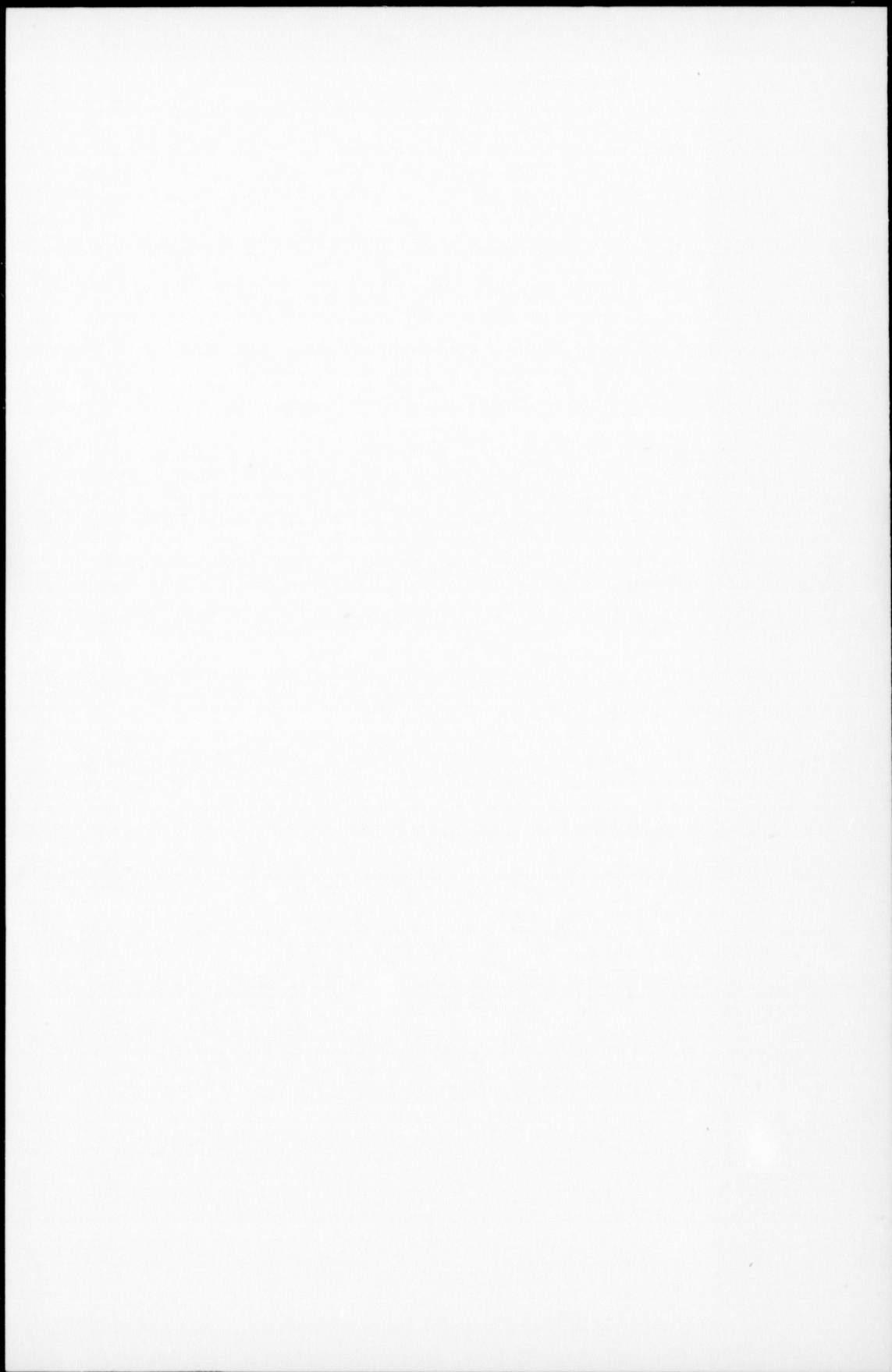
2. The charging of the account with an amount, rounded to the next \$100, to cover the monthly payment due to the trust company as shown by its statement of account, if such monthly payment is not made on or before the due date does not seem to be authorized by the contract. Paragraph 4 of the agreement allows the trust company to charge such monthly payment against your other checking account. Further consideration will be given to the propriety and legal validity of such practice, if you will submit a statement rendered by the trust company which shows that it does so.

As neither the statute nor the contract impose a duty upon the trust company to furnish the monthly statements, the borrower should not wait until he receives it, if he wants to avoid defaulting.

3. The trust company may not be criticized for failing to credit to the Credit Account deposits made by the depositor to his other account. It is customary to use separate or different deposit tickets to indicate which account is to be credited. The trust company follows the instruction of the depositor as indicated by the deposit ticket being used. The depositor, for his own purposes, may prefer to have the deposit credited to his regular checking account rather than to the credit account.

Very truly yours,

HYMAN MARK
Associate Attorney



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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JORDAN BROWN and all others :
similarly situated, :

Plaintiff-Appellee, :

-against- :

FIRST NATIONAL CITY BANK, :

Defendant-Appellant. :

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STATE OF NEW YORK,
COUNTY OF NEW YORK.

AFFIDAVIT OF
SERVICE


Docket No.
74-1279

WARREN SORGEN, being duly sworn, says:

1. I am over the age of twenty-one years and am not a party to this action.

2. On May 30, 1974, at about 4:20 o'clock p.m., I served a true copy of the within Notice of Motion for Leave to File an Addendum to the Reply Brief for Defendant-Appellant and ^{2 Copies} Addendum to the Reply Brief for Defendant-Appellant upon Sheldon V. Burman, Esq., attorney for Plaintiff-Appellee, at this office located at 21 East 40th Street, in the Borough of Manhattan, City and State of New York, by leaving the same with a person in charge of said attorney's office.

3. Deponent describes individual so served as follows: male, 40 years of age, 5'8", 160 lbs., hair: brown, skin: white.


Warren Sorgen

Sworn to before me this
31st day of May, 1974.

Gilbert H. Bleich

GILBERT H. BLEICH
Notary Public, State of New York
No. 31-0318950
Qualified in New York County
Commission Expires March 30, 1975

copy sent
for Lefkovich, J.
N.Y. State Bar Assn
May 30, 1974

